CHEN CHOY & SON REALTY SDN. BHD.

v.

GENESHA GANAPATHY & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING SUMMONS NO. F 1360 OF 1984]
28 JUNE 1986

CIVIL PROCEDURE: *Consent order relating to sale of lands and distribution of proceeds - Following this consent order, the Senior Assistant Registrar upon a summons for directions made two directions - On appeal, defendants abandoned one objection on one of the directions - Whether the Senior Assistant Registrar had exceeded her powers by making the second direction.*

The proceedings in this originating summons commenced by way of an application by the plaintiff to partition 2 pieces of land in the proportion to which both the plaintiff and the defendants held undivided shares. However, at the hearing, all parties agreed to have the lands sold instead by way of public auction and that the proceeds be distributed to them proportionately.

Following this consent order, the parties appeared before the Senior Assistant Registrar upon a summons for directions under O. 13 r. 4, and two of the directions made by her relate to the amount of the reserve price and the liberty given to both the plaintiff and the defendants to bid at the sale and in the event of either party becoming the purchaser, the successful party was entitled to set off the purchase price against the share of the same due to the successful party less the costs and expenses of the sale and all costs in this originating summons. Dissatisfied with these 2 directions, the defendants appealed to the learned Judge but at the hearing of the appeal, they abandoned their objection to the amount of the reserve price and proceeded only on their objection to the set off. They contended that by allowing the set off, it was an extension of the consent order and since this was done without the consent of the parties, the Senior Assistant Registrar was wrong in providing for the set off.

Held:

[1] The summons for directions before the Senior Assistant Registrar was only the means by which the sale could be effectively conducted and the set off was just one of the ways by which the particulars and the conditions of sale could be carried out. The consent order made provision for both parties to bid at the sale and by directing the set off, the Senior Assistant Registrar was doing nothing more than to confirm the manner in which the bid by the successful party could be effectively carried out and as such she was merely giving effect to an order that had been mutually agreed between them.

[2] The defendants were in no way prejudiced by the direction of the Senior Assistant Registrar and she had not in any way varied the consent order.

[Appeal dismissed with costs.]

For the defendants/appellants - Dennis Xavier; M/s. Dennis Xavier & Co.
For the plaintiff/respondent - D.P. Naban; M/s. Skrine & Co.

JUDGMENT

Siti Norma Yaakob J:

The proceedings in this originating summons commenced by way of an application by the plaintiff to partition 2 pieces of land in the proportion to which both the plaintiff and the defendants hold undivided shares. However, at the hearing, all parties agreed to have the lands sold instead by way of public auction and that the proceeds be distributed to them in the proportion of the shares each has over the lands in question.

Following this consent order, the parties appeared before the Senior Assistant Registrar upon a summons for directions under O. 31, r. 4, and two of the directions made by her relate to the amount of the reserve price and the liberty given to both the plaintiff and the defendants to bid at the sale and in the event of either party becoming the purchaser, the successful party is entitled to set off the purchase price against the share of the same due to the successful party less the costs and expenses of the sale and all costs in this Originating Summons. Dissatisfied with these 2 directions, the defendants appealed to me but at the hearing of the appeal, they abandoned their objection to the amount of the reserve price and proceeded only on their objection to the set off.

They concede that whilst they had consented to both the plaintiff and themselves bidding at the sale, they maintain that the Senior Assistant Registrar had exceeded her powers by allowing the successful bidder to set off the purchase price against the share due to him after deducting all the expenses of the sale and the costs of these proceedings. They consider that by allowing the set off, it was an extension of the consent order and since this was done without the consent of the parties, the Senior Assistant Registrar was wrong in providing for the set off.

As far as I can see, the only issue before me is whether the Senior Assistant Registrar had varied the consent order by allowing the set off. The summons for directions before her was only the means by which the sale can be effectively conducted and the set off is just one of the ways by which the particulars and the conditions of sale can be carried out. The consent order makes provision for both parties to bid at the sale and by directing the set off, the Senior Assistant Registrar was doing nothing more than to confirm the manner in which the bid by the successful party can be effectively carried out and as such she was merely giving effect to an order that have been mutually agreed between them. As far as I can see, the defendants are in no way prejudiced by the direction of the Senior Assistant Registrar and as I consider that she has not in any way varied the consent order, I had accordingly dismissed the appeal with costs.

Also found at [1986] 2 CLJ 128